

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-214

May 3, 2004

THE WATER TAXI F/K/A PRESUMPCOT
WATER TAXI
Request for Waiver of Chapter 520, Section 2N,
To Maintain One 18-Passenger Boat and One
Six-Passenger Boat

ORDER DENYING WAIVER
REQUEST

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

We deny a request of The Water Taxi for a waiver from Chapter 520 § 2 of the Commission's Rules to operate a "water taxi" carrying more than six passengers.

II. BACKGROUND

On March 24, 2004, the Commission received a request from The Water Taxi (formerly Presumpscot Water Taxi) for a waiver of Chapter 520, §2 of the Commission's Rules. The Water Taxi requests permission to operate an 18-passenger boat as a "water taxi." Commission rules define "water taxi service" as "on-demand, unscheduled one way passenger service in Casco Bay that stops at one or more of the Regulated Islands [as defined in the Rule] and that is provided for six or fewer passengers." A request for authorization of service that does not meet the definition of water taxi service, charter service or unscheduled freight is considered to be an application for authorization as a ferry provider under 35-A M.R.S.A. § 5101. Chapter 520, § (3)(C).

In its request, The Water Taxi claims that an 18-passenger limit will not alter the current ridership of Casco Bay Island Transit Authority (CBITD or the District) and that its service is not meant to compete with CBITD. The Water Taxi claims that limiting the number of passengers while not limiting the number of boats offers no protection to CBITD and that the limit of six passengers in the Rule is an arbitrary restriction.

The Commission invited all interested parties to comment on The Water Taxi's request. The Commission received comments from Portland Express Water Taxi, Eagle Island Tours, and the CBITD. All commenters opposed the granting of a waiver. The District argues that granting such a waiver is inconsistent with both the purposes of statute and Chapter 520 of the Commission's Rules. According to the District, the six-passenger limit is critical to the distinction the Commission has drawn between water taxi service and regular ferry service. The statute and rule create a balance between the desire of some passengers for instantaneous on-demand service versus the public benefit of safe, reliable, year-round regular schedule service. According to the District, water taxis already negatively impact the District's revenues and allowing larger boats

will only exacerbate the situation. Finally, the District argues any major change, such as a redefinition of water taxi, must be done through a rulemaking.

Mr. Willard, owner of Portland Express Water Taxi, objects primarily because the request is from a water taxi provider and not a request from islanders. He also states that if the waiver is granted he expects other carriers to request the same privilege. Mr. Frappier of Eagle Island Tours states that there are six companies that would likely make the same request and such service would cripple the District's service to the Islands.

III. DECISION

Chapter 520 § 7 allows for a waiver of the Rule's provisions:

Upon request of any persons subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Technical Analysis, or the presiding officer assigned to a proceeding related to this Chapter may grant this waiver.

The Water Taxi's request to operate an 18-passenger boat as a water taxi is inconsistent with the purposes on the Chapter 520 and 35-A M.R.S.A. §§ 5101-5101-C. As pointed out by the District, the Rule was carefully crafted to carve out a class of on-demand unscheduled service that was expected to have minimal competitive impact on service provided by the Casco Bay Island Transit District. This is consistent with the statutory scheme whereby the Legislature has found that provision of affordable year-round passenger, freight and vehicle transportation to the islands served by the District is critical to the continued existence of the Casco Bay Island communities. 35-A M.R.S.A. § 5101-A. Chapter 520 provides for relaxed regulation of water taxis for both entry and rates, given its limited nature.

When the Commission amended Chapter 520 in 1999, it replaced the minimum tariff requirement for water taxi service with a requirement to charge a flat rate based on the origination and termination points, regardless of whether the vessel carried fewer than six passengers. In so doing, the Commission noted the restrictions that distinguish water taxis from ferry service, including on-demand, unscheduled service with a limit of six passengers. Docket No. 99-208 Order at 8. Allowing more than six passengers changes the economics of this flat rate scheme. With sixteen passengers, water taxi transportation becomes more affordable and potentially competes with ferry service for customers.

We find that allowing water taxis to serve more than six passengers would be inconsistent with the design of the Rule and cannot be permitted as a waiver. Therefore, we deny The Water Taxi's request for a waiver of Chapter 520 to allow it to

carry more than six passengers. If we were to consider such a change, it would need to occur as part of a rulemaking proceeding where all views could be heard.

Dated at Augusta, Maine, this 3rd day of May, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.